

JONATHAN SELBIN (Cal. Bar No. 170222)  
jselbin@lchb.com  
MICHELLE LAMY (Cal. Bar No. 308174)  
mlamy@lchb.com  
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
275 Battery Street, 29<sup>th</sup> Floor  
San Francisco, CA 94111  
Telephone: (415) 956-1000  
Facsimile: (415) 956-1008

ELIZABETH A. FEGAN (Cal. Bar No. 355906)  
beth@feganscott.com  
FEGAN SCOTT LLC  
150 S. Wacker Drive, 24<sup>th</sup> Floor  
Chicago, IL 60606  
Telephone: (312) 741-1019  
Facsimile: (312) 264-0100

*Attorneys for Plaintiffs and the Proposed Class  
(Additional Counsel on Signature Page)*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

JOHN DOE 1, JOHN DOE 2, JOHN DOE 3,  
JOHN DOE 4, JOHN DOE 5, JOHN DOE 6,  
JOHN DOE 7, JOHN DOE 8, JOHN DOE 9,  
JOHN DOE 10, JOHN DOE 11, and JOHN  
DOE 12, DOE 13, DOE 14 individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

THE UNIVERSITY OF SAN FRANCISCO,  
ANTHONY N. (AKA NINO) GIARRATANO,  
and TROY NAKAMURA,

Defendants.

Case No. 3:22-cv-01559-LB

**PLAINTIFFS' RESPONSE IN  
OPPOSITION TO USF'S STATEMENT IN  
SUPPORT OF SEALING REQUEST (ECF  
NOS. 265, 274)**

**Civil Local Rule 79-5(f)**

Judge: Hon. Laurel Beeler

1 Pursuant to Civil Local Rule 79-5(f)(4), Plaintiffs hereby respond to oppose Defendant  
2 University of San Francisco (“Defendant USF”)’s Statement in Support of Sealing Request. (ECF  
3 Nos. 265, 273). As an initial matter, Defendant USF’s Statement is improper as it requests sealing  
4 of all unredacted exhibits to Plaintiff’s Motion for Class Certification, ECF. No. 273 at 2, even  
5 though Plaintiffs’ Administrative Motion to Consider Whether Another Party’s Material Should be  
6 Sealed only implicates Exhibits 1-2, 6-19, 21-34, 36-37, and 39—the exhibits designated as  
7 “Confidential” or “Highly Confidential” by Defendants USF, Anthony N. Giarratano  
8 (“Giarratano”), or Troy Nakamura (“Nakamura”). *See* ECF 265. Moreover, Defendant USF’s  
9 Statement in Support of Sealing Request must be denied as it ignores this Court’s prior rulings and  
10 fails to satisfy its burden under Civ. L.R. 79-5.

11 “Only in rare circumstances should a party seek to file portions of a pleading or brief under  
12 seal.” Civ. L.R. 79-5(e). As such, motions for class certification and their attachments may be  
13 sealed only upon a showing of “compelling reasons” for sealing. *Racies v. Quincy Bioscience,*  
14 *LLC*, No. 15-cv-00292 HSG, 2017 U.S. Dist. LEXIS 206806, at \*4 (N.D. Cal. Dec. 15, 2017).  
15 Specifically, Defendant USF’s Statement must “articulate[] compelling reasons supported by  
16 specific factual findings, that outweigh the general history of access and the public policies  
17 favoring disclosure, such as the public interest in understanding the judicial process.” *Kamakana*  
18 *v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006) (internal citations omitted).  
19 In addition, Defendant USF must explain (i) the legitimate private or public interests that warrant  
20 sealing; (ii) the injury that will result if sealing is denied; and (iii) why a less restrictive alternative  
21 to sealing is not sufficient. Civ. L.R. 79-5(c)(1), (f)(3).

22 Plaintiffs’ Motion for Class Certification, including its attachments, should not be sealed at  
23 all; Defendant USF’s Statement makes no attempt to comply with the local rules or articulate  
24 compelling reasons to seal. In fact, Defendant USF cites no case law whatsoever to support its  
25 Statement in Support of Sealing. Rather, Defendant USF focuses almost exclusively on the  
26 argument that all exhibits containing confidential information and testimony from the related  
27 private arbitration between Defendant USF and Giarratano must be sealed because such materials  
28

1 are designated confidential under the Protective Order. It should be noted that only a fraction of  
2 the exhibits that Defendant USF seeks to seal (Exhibits 1, 16, 18, and 36) contain arbitration  
3 materials. Furthermore, this court has already rejected Defendant USF's argument concerning  
4 confidentiality designations, denying the sealing of arbitration materials other than the arbitration  
5 briefing. *See* ECF No. 269 at 3-4. As such, the request to seal exhibits containing arbitration  
6 materials, other than the arbitration briefing, must be denied.

7 As to the vast majority of the exhibits, which encompass Title IX policy (Exhibit 2), various  
8 correspondence (Exhibits 6-15, 17, 19, 21-29, 31-34, 37, 39), and an analysis of the USF Baseball  
9 Team (Exhibit 30), Defendant USF makes the sole argument that such exhibits contain specific  
10 personal information from individual employees. But Federal Rule of Civil Procedure 5.2 already  
11 provides for redactions to specified personally identifying information, and Plaintiffs of course  
12 have no objection to any such redactions. Defendant USF makes *no attempt* to satisfy its burden  
13 under Civ. L.R. 79-5(c)(1) to redact or seal anything beyond such information—or even to confirm  
14 whether such information in fact exists in the above exhibits—and USF provides *no case law* to  
15 demonstrate either the compelling reasons that warrant wholesale sealing of the above-numbered  
16 exhibits or the injury that will result if sealing is denied. Thus, the requests to seal the remaining  
17 exhibits must also be denied.

18 Defendant USF also argues that exhibits containing the names of Plaintiffs and their family  
19 members must be sealed, as Plaintiffs have sought to maintain such information as confidential  
20 throughout this proceeding. This argument ignores the fact that the Court has already granted  
21 Plaintiffs' Motion to Proceed Anonymously and prior motions to seal this information. *See* ECF  
22 Nos. 63, 224; Civ. L.R. 79-5(b) ("A party need not file a motion to seal if a federal statute or a prior  
23 court order in the same case expressly authorizes the party to file certain documents (or portions of  
24 documents) under seal."). Plaintiffs of course have no objection to all parties continuing to redact  
25 Plaintiffs' and their family members' names and personally identifying information from public  
26 filings to protect their identities, as ordered by the Court. But that is no justification for the  
27 wholesale sealing USF requests.

1 Accordingly, USF's Statement in Support of Sealing Request must be denied in full.

2  
3 Dated: December 3, 2024

Respectfully submitted,

4  
5 /s/ Michael von Klemperer

MICHAEL VON KLEMPERER

(admitted pro hac vice)

mike@feganscott.com

FEGAN SCOTT LLC

1763 Columbia Road NW, Suite 100

Washington, DC 20009

Telephone: (202) 921-0002

Facsimile: (312) 264-0100

10 ELIZABETH A. FEGAN (Cal. Bar No. 355906)

11 beth@feganscott.com

FEGAN SCOTT LLC

12 150 S. Wacker Dr., 24th Floor

13 Chicago, IL 60606

Telephone: (312) 741-1019

14 Facsimile: (312) 264-0100

15 LYNN A. ELLENBERGER (admitted pro hac vice)

16 lynn@feganscott.com

FEGAN SCOTT LLC

17 322 North Shore Dr., Bldg. 1B, Suite 100

Pittsburgh, PA 15212

18 Telephone: (412) 346-4104

19 Facsimile: (312) 264-0100

20 JONATHAN D. SELBIN (Cal. Bar No. 17022)

jdselbin@lchb.com

21 MICHELLE LAMY (Cal. Bar No. 308174)

mlamy@lchb.com

22 LIEFF CABRASER HEIMANN & BERNSTEIN

23 275 Battery Street, 29th Floor

San Francisco, CA 94111-3339

24 Telephone: (415) 956-1000

Facsimile: (415) 956-1008

25 JESSICA A. MOLDOVAN (admitted pro hac vice)

26 jmoldovan@lchb.com

LIEFF CABRASER HEIMANN & BERNSTEIN

27 250 Hudson Street, 8th Floor

28 New York, NY 10013

Telephone: (212) 355-9500

*Attorneys for Plaintiffs and the Proposed Class*

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